

**REMARKS**

Applicants respectfully request favorable reconsideration of this application, as amended.

Applicants acknowledge with appreciation the indication of allowable subject matter in Claim 28. Claim 28 has thus been rewritten in independent form to include features of parent Claim 23. Accordingly, Claim 28 should be in condition for allowance.

The specification has been revised to correct a typographical error in the Cross-Reference to Related Applications and to conform the language therein to U.S. practice.

Withdrawn Claims 1-18 and 29-39 have been canceled without prejudice or disclaimer. Applicants reserve the right to present the canceled claims in one or more divisional applications. Claims 19-27 have been revised to clarify the invention intended to be claimed. New Claims 40 and 41 have been added to provide more comprehensive protection for certain aspects of the invention. Thus, Claims 19-28, 40, and 41 are currently pending, with Claims 19, 23, and 28 being independent. All pending claims are readable on the elected invention.

Claims 19, 20, and 22 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Peterson et al. (USP 5,247,434). Claims 21, 23, and 25-27 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Peterson et al. Claims 19-24, 26, and 27 also stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Peterson et al. in view of Burbank et al. (US 2001/0037079).

Without acceding to the outstanding rejections, Claim 19 has been revised to recite, *inter alia*, that the first and second containers are in a stacked relationship such that the weight of one of the first and second containers bears on the other of the first and second containers, the first and second containers have flexible walls in direct contact

with each other such that they form a column of fluid that conforms to the shape and size of the support, and that a controller is connected to control a pump and to receive a signal from said pressure sensor and control a rate of flow of at least one of said fluid waste and said replacement fluid to and from said first and second containers responsively to said signal, such that a constant height of the column of fluid is maintained and thereby maintaining a constant total mass of fluid in both of the first and second containers combined.

Claim 23 now recites, *inter alia*, that the container means are flexible and that a controller is configured to control a rate of flow of replacement fluid responsively to the pressure sensor such that a combined weight of the first and second containers is maintained at a constant level, whereby a flow from one of the first and second containers is offset by a flow into the other of the first and second containers. Claim 23 also recites that a support supports the first and second containers in cooperating relationship such that a pressure in at least one of said first and second containers is indicative of a combined weight of said first and second containers with their respective contents.

It is apparent that the applied references fail to teach or suggest at least the above-noted features of the claims. In particular, note that Peterson teaches side-by-side first and second containers, wherein fluid flowing into one of the containers causes fluid to flow out of the other of the containers (see Peterson, col. 4, line 40 – col. 5, line 28). As such, the weight of one of Peterson's containers does not bear on the other. Moreover, Peterson's containers are not supported in a cooperating relationship such that a pressure in one of the first and second containers is indicative of a combined weight of the first and second containers with their respective contents.

Furthermore, the Office Action relies upon Peterson's element 52 for a teaching of the claimed pressure sensor. However, element 52 is a flow equalizer, not a pressure sensor. The flow equalizer serves to control the flow rate between inlets of different first and second chambers so that they fill at the same rate (see Peterson, col. 5, line 56 – col. 6, line 4). Moreover, computer 500, relied upon in the rejection for a teaching of the claimed controller, serves to control operation of the machine. There is no teaching in Peterson of computer 500 receiving a signal from element 52 or of computer 500 controlling flow rates of replacement fluid or fluid waste responsively to element 52. Accordingly, Peterson is deficient with regard to at least these features of the claims.

The Office Action further states that:

It is the position of the Examiner that placing the containers on top of one another, absent any claimed structure that operates the containers differently than when they are side by side, is not a patentable improvement over the prior art.

Applicants respectfully note that the claimed relationship of the first and second containers operate differently than the side by side configuration of Peterson. In the side by side configuration, fluid is pumped into a first chamber (e.g., 130). The expansion of the first chamber as fluid is pumped causes a reduction in size of the second chamber (e.g., 134), thereby forcing fluid out of the second chamber. Thus, a pressure difference between the first and second containers caused by filling one of the containers would result in a flow of fluid from the other of the containers. In contrast, in a stacked configuration, weight of fluid in the top container would bear on the bottom container, but the bottom container would not impact the top container. As the claimed structure is thus different than the side by side structure, the rejection based on Peterson is further untenable on this ground.

The Office Action also states:

When the density of fluid and volume of a container are known, a pressure measurement may be manipulated to arrive at a measurement of the weight of the containers. The support claimed by Applicant does not add any structural limitation that distinguishes over the prior art.

Applicants respectfully disagree with the statement that density and volume of a container are sufficient to derive weight from a pressure of a container. The Office Action does not derive support for this statement in any of the relied upon references and is additionally lacking any details on how such a calculation would be made (i.e., it has not been shown how a pressure measurement would be correlated to weight of the containers in the side by side configuration of Peterson). If the Examiner is relying on Official Notice for some teaching in the art, Applicants hereby request that the Examiner cite a reference in support of such assertion. In addition, whatever scientific principles may underlie the present invention, the recited structural features are not shown or taught in the applied references and are not obvious thereover.

With regard to the secondary reference, Burbank et al. is also deficient with regard to the claimed first and second containers as well as the claimed pressure sensor and controller. While Burbank et al. may be seen to use a stacked configuration for fluid containers, it does not teach a controller controlling flow rates responsively to a signal from a pressure sensor in pressure communication with at least one of the containers. In contrast to the applied references, the claimed structural features permit the use of pressure to maintain fluid balance.

For at least the reasons set forth above, independent Claims 19, 23, and 28 distinguish patentably from the applied references. Claims 20-22, 24-27, 40, and 41, which depend from Claims 19 and 23, are also believed to be patentable for at least the

reasons discussed above with respect to Claims 19 and 23, as well as due to the additional subject matter contained therein.

Accordingly, this application is in condition for allowance and an early Notice of Allowance is respectfully requested.

Should the Examiner believe that any further action is necessary to place this application in better form for allowance, the Examiner is invited to contact Applicants' representative at the telephone number listed below.

The Commissioner is hereby authorized to charge to Deposit Account No. 50-1165 (T4342-14264US01) any fees under 37 C.F.R. §§ 1.16 and 1.17 that may be required by this paper and to credit any overpayment to that Account. If any extension of time is required in connection with the filing of this paper and has not been separately requested, such extension is hereby requested.

Respectfully submitted,

Date: July 9, 2009

Miles & Stockbridge, P.C.  
1751 Pinnacle Drive  
Suite 500  
McLean, Virginia 22102-3833  
(703) 903-9000

By: /Frederick F. Rosenberger/  
Mark A. Catan  
Reg. No. 38,720  
  
Frederick F. Rosenberger  
Reg. No. 61,404